TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~315~~ 83.

EDWARD W. VOIGT, PLAINTIFF IN ERROR,

vs.

THE CITY OF DETROIT AND THOMAS M. LUCKING, RECEIVER OF TAXES OF SAID CITY OF DETROIT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED JUNE 15, 1900.

(17,800.)

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN

INDEX.

	Original.	Print.
Transcript from circuit court of Wayne county	1	1
Bill of complaint	1	1
Motion for temporary injunction	5	4
Subpœna	6	4
Sheriff's return	7	5
Demurrer to bill of complaint	8	5
Decree	9	6
Claim of appeal	11	7
Minute entry of submission	12	7
Opinion	13	7
Decree	18	12
Petition for writ of error	19	12
Writ of error	21	13
Citation	23	14
Proof of service of citation	24	14
Assignment of errors	25	15
Bond on writ of error	28	16
Docket entries	30	17
Clerk's certificate	31	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 17, 1900.

1 *Bill of Complaint.*

In the Circuit Court for the County of Wayne.

To the circuit court for the county of Wayne, in chancery:

Your orator, Edward W. Voigt, respectfully shows unto the court:

1. That he resides in the city of Detroit, Wayne county, Michigan, and is and ever since a time prior to the year 1893 has been the owner in fee of the following-described lands situated in the city of Detroit, Wayne county, Michigan, to wit: Lots numbered 2 to 370, inclusive, except lots numbered 96, 340 and 341, of E. W. Voigt's subdivision of the Voigt Park farm, being part of quarter section 36 of the ten-thousand-acre tract, so called, according to the plat thereof on record in the office of the register of deeds for said county, in Liber 18 of Plats, on page 44. That the said plat was made by your orator and recorded in the year 1893, and that thereby a street, designated on said plat as "Second avenue," corresponding in line with a street of that name opened in the condemnation proceedings hereinafter referred to, and of a width of 80 feet, was dedicated by your orator as a public street and highway through said subdivision from north to south, as by said plat, to which reference is made, will more fully appear, and that the street so dedicated has ever since remained and now is a public highway.

2. That subsequently to the making of said plat, and in the year 1898, proceedings were taken by the city of Detroit, in the recorder's court of said city, for the purpose of opening and extending Second avenue from the Grand boulevard west to the northerly city limits, with the width of 80 feet where not already opened, under the general street-opening law, which proceedings resulted in a verdict that the opening of said street as contemplated in said proceedings was a public necessity, that it was necessary to take certain property in said verdict described for that purpose, and awarding damage as compensation for the taking of said property to the amount of $73,732.68. That said verdict was duly confirmed by the court, and that a copy thereof and of the judgment of confirmation was transmitted to the common council of the city of Detroit on the 14th day of June, 1898, and was referred to the committee on street openings. That on the 3d

2 day of January, 1899, said committee on street openings reported, recommending that $49,155.12 of the said award be assessed on a local assessment district and that the balance thereof be paid by the city of Detroit, and that accordingly a resolution was then introduced in and adopted by said common council fixing and determining the property to be included in said assessment district, and including therein the property above described as belonging to your orator, and reciting "that it is hereby determined that the sum of $49,155.12 is a just proportion of the compensation awarded by the jury for the property taken for said improvement which should be paid by the owners" of the property included in said assessment district, and resolving that that amount be assessed and levied upon the several parcels of said property by the board of assessors of the

city of Detroit, all of which, by the proceedings of said common council at the meeting of January 3, 1899, found on pages 979 to 981 of the printed council proceedings of the year 1898, will more fully appear. That your orator had no notice of the intention of said common council to impose and have assessed upon a local assessment district a part of the damages awarded by the jury in said condemnation proceedings, and no notice to appear before said council or any committee thereof in relation to the matter of determining the limits of such district and the amount to be assessed thereon, and that he was given no opportunity to appear and be heard before said common council or any committee thereof with reference thereto.

3. That afterwards, in pursuance of said resolution, an assessment-roll, being street-opening assessment-roll number 111, assessing upon the several parcels of property embraced in said assessment district the amount required by the terms of said resolution, was prepared by the board of assessors of the city of Detroit, and transmitted to the said common council on the 18th day of April, 1899, and was, upon May 9, 1899, confirmed by the said common council. That by the assessment-roll so confirmed there is assessed upon and against the several parcels of property above described as belonging to your orator sums amounting in the aggregate to the sum of $9,951.00. That said roll has been placed in the hands of Thomas M. Lucking, receiver of taxes of the city of Detroit, for collection. That your orator has been notified by the said receiver of the assessments made against his property as aforesaid, and demand has been made upon him by said receiver for the payment thereof. Your orator is informed, verily believes, and avers that unless payment of said assessments is made on or before the 1st day of September, 1899, the said receiver of taxes intends to, and will, unless restrained by this court, advertise for sale and sell the several parcels of real estate belonging to your orator for the amounts assessed thereon as aforesaid.

That said assessments now constitute a cloud on the title of your orator to his said lands.

3 4. Your orator avers further that he is advised by counsel and verily believes that the provisions of the general street-opening law for assessment upon local assessment districts of amounts awarded as damages in condemnation proceedings or a portion thereof, being the provisions contained in section 3406 of the Compiled Laws of the State of Michigan of 1897, are unconstitutional and invalid for the following reasons:

I. Because said law does not provide for giving to the property-owners interested any notice of the proceedings of the common council for the determination of the limits of the local assessment district, and the amount or proportion of the award of the jury to be assessed thereon, and does not provide for the giving to the property-owners interested notice of any hearing by such common council as to the amount of land to be included in such assessment district and as to the amount or proportion of such award to be assessed thereon.

II. Because said law does not fix the basis upon which or the standard by which the common council are to determine what is the

just proportion of the compensation awarded by the jury to be assessed upon the assessment district.

III. Because the said law does not require that the amount of the award of the jury which the common council may order to be assessed upon such assessment district shall not exceed the total amount of the benefits derived by the lands in said district from the improvement to pay the expense of which such award was made.

IV. Because the said law violates the provisions of the fourteenth article of amendments to the Constitution of the United States in that it provides for the taking of property without due process of law.

That the proceedings of said common council, hereinbefore set forth, in determining said assessment district and the amount to be assessed upon it are invalid for the reasons aforesaid and for the further reason that it does not appear by the resolution fixing said district and determining the amount to be assessed thereon upon what basis or standard or by what method the council determined the proportion of the award to be assessed upon said district, or that the amount to be assessed did not exceed the total amount of benefits derived by the property to be assessed from the improvement.

To the end, therefore, that The City of Detroit and Thomas M. Lucking, receiver of taxes, who are made defendants hereto, may appear and answer this bill of complaint, but not under oath (answer under oath being hereby expressly waived); that the said proceedings of the common council of the city of Detroit in constituting said assessment district and fixing the amount to be assessed thereon, and the said assessments made upon the lands of your orator under color of said proceedings may be declared to be null and void; and that the defendants, their counselors and agents, may be perpetually enjoined from advertising for sale and from selling the said lands of your orator; and that your orator may have such further and other relief as the case may require and may be agreeable to equity.

May it please the court to grant to your orator the writ of temporary injunction restraining the defendants from advertising for sale and from selling said lands until the further order of the court, and also the writ of subpœna in the usual form.

And your orator will ever pray, etc.

EDWARD W. VOIGT.

WALKER & SPALDING,
Solicitors for Complainant.

STATE OF MICHIGAN, }
County of Wayne, } ss:

On this fifth day of July, 1899, before the undersigned, a notary public in and for said county, personally appeared Edward W. Voigt, the complainant named in the foregoing bill of complaint, who, being duly sworn, said that he had read said bill, by him subscribed, knew the contents thereof, and that the same was true of his own

knowledge, except matters therein stated on information and belief, and that as to those he believed it to be true.

KITT B. O'MARA,
Notary Public, Wayne Co., Mich.

(Endorsed:) Filed July 10, 1899. John P. Fisher, deputy clerk.

5 In the Circuit Court for the County of Wayne. In Chancery.

EDWARD W. VOIGT
vs.
THE CITY OF DETROIT and THOMAS M. LUCKING, Receiver of Taxes for said City.

Now comes the complainant, by Walker & Spalding, his solicitors, and moves the court that the writ of temporary injunction may issue in the above-entitled cause, directed to the above-named defendants, their counsellors and agents, restraining them and each of them from advertising for sale and from selling the lands of the complainant set forth in the bill of complaint in this cause until the further order of this court. This motion is based upon the following grounds:

1. The unconstitutionality of the law under which the assessment complained of in this cause was made. 2. The invalidity of the resolution of the common council fixing the assessment district and determining the amount to be assessed thereon, being the resolution under which the assessment was made, the reasons for said invalidity being fully set forth in the bill of complaint in said cause, which will be read in support of this motion.

WALKER & SPALDING,
Solicitors for Complainant.

6 (*Chancery Subpœna.*)

STATE OF MICHIGAN, *ss:*

The Circuit Court for the County of Wayne. In Chancery.

Subpœna.

In the name of the People of the State of Michigan to the City of Detroit and Thomas M. Lucking, receiver of taxes for said city, Greeting:

You are hereby notified that a bill of complaint has been filed against you in the circuit court for the county of Wayne, in chancery, by Edward W. Voigt, as complainant, and that if you desire to defend the same you are required to have your appearance filed or entered in the cause, in accordance with the rules and practice of the court, in person or by solicitor, within fifteen days after service of this subpœna upon you. Hereof fail not under the penalty of having said bill taken as confessed against you.

The return day of this writ is the 25th day of July, A. D. 1899.

Witness the Hon. Willard M. Lillibridge, circuit judge, at Detroit, this 10th day of July, A. D. 1899.

WM. H. McGREGOR, *Register*,
By JOHN P. FISHER,
Deputy Register.

WALKER & SPALDING,
Solicitors for Complainant.

Business address: 18 Moffat bldg., Detroit, Mich.

7 STATE OF MICHIGAN, }
County of Wayne, } *ss:*

I hereby certify and return that on the tenth day of July, A. D. 1899, at Detroit, in said county, I served the within writ upon the City of Detroit and Thomas M. Lucking, receiver of taxes of said city, the defendants therein named, by showing the same to Francis A. Blades, controller of Detroit, and to Thomas M. Lucking, receiver of taxes, and at the same time delivering to each of them a true copy of said writ of subpœna.

Dated July 10th, 1899.

G. DUFFIELD STEWART,
Sheriff of said County.
By P. J. HAYES, *Deputy Sheriff.*

Fees, service of writ, $2.00.

(Filed July 14, 1899.
JOHN P. FISHER, *Clerk.*)

8 *Demurrer.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

EDWARD W. VOIGT }
vs.
THE CITY OF DETROIT ET AL. }

The defendants say that the complainant has not stated such a case in his bill of complaint as entitles him to relief in a court of equity for the following reasons:

Because said bill alleges as the only grounds for relief that the law under which the condemnation proceedings were had is unconstitutional; whereas these defendants aver that the same is constitutional.

And the further ground that it does not appear upon what basis or standard the common council determined the proportion of the award should be assessed upon the assessment district, or that the amount assessed does not exceed the total amount of benefits derived by the property assessed; whereas these defendants aver that said

determination by the common council does show all that is required by law, and is, therefore, sufficient.

CHAS. FLOWERS,
Solicitor for Defendants.

I hereby certify that I have principal charge of the above-entitled cause in behalf of the defendants, that the demurrer was not interposed for delay, and in my opinion, it is well founded.

C. D. JOSLYN,
Assistant Corporation Counsel, of Counsel for Defendants.

9 *Decree.*

In the Circuit Court for the County of Wayne. In Chancery.

EDWARD W. VOIGT }
vs.
THE CITY OF DETROIT ET AL. }

At a session of said court held at the court-room in the city of Detroit, the 15th day of August, 1899.

Present: The Honorable George S. Hosmer, circuit judge.

This cause came on to be heard upon the bill of complaint and the demurrer of the defendants thereto filed in said cause, and after hearing Walker & Spalding, solicitors for the complainant, and Charles D. Joslyn, assistant city counsel on behalf of the defendants, and it appearing that section 15 of an act to authorize cities and villages to take private property for the use and benefit of the public, being section 3406 of the Compiled Laws of 1897, being the provision of said act under which the assessments and other proceedings set forth in the bill of complaint in this cause were had, is unconstitutional, and that said assessment-roll set forth in said bill and the assessments therein made against the property of the complainant were therefore illegal and invalid:

It is ordered, adjudged and decreed, and the court, by virtue of the authority in it vested, doth order, adjudge and decree that the proceedings of the common council of the city of Detroit in constituting said assessment district set forth in the bill of complaint and fixing the amount to be assessed thereon, and the proceedings for the assessment of the lands belonging to complainant described in the bill of complaint, and the assessments made by street-opening assessment-roll No. 111 upon said lands, to wit, lands situated in the city of Detroit, Wayne county, Michigan, described as lots numbered 2 to 370, inclusive, except lots numbered 96, 340 and 341 of E. W. Voigt's subdivision of the Voigt Park farm, being part of quarter section 36 of the ten-thousand-acre tract, so called, according to the plat thereof of record in the office of the register of deeds for said county, in Liber 18 of Plats, on page 44, are, and the same are hereby declared to be, null and void.

10 It is further ordered, adjudged, and decreed that the defendants, The City of Detroit and Thomas M. Lucking, the receiver of taxes of said city, their counsellors and agents, be and

they hereby are perpetually enjoined from advertising for sale and from selling said lands and from taking any proceedings to enforce said assessments against said lands or any part thereof.

It is further decreed that the complainant recover his costs and expenses of this suit to be taxed.

GEO. S. HOSMER,
Circuit Judge.

JOHN A. SEELY,
Deputy Register.

11 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

EDWARD W. VOIGT
vs.
THE CITY OF DETROIT and THOMAS M. LUCKING, Receiver of Taxes.

To the register:

The defendants, The City of Detroit and Thomas M. Lucking, receiver of taxes, hereby claim the benefit of an appeal to the supreme court from a decree heretofore, to wit, on the 17th day of August, 1899, entered in said cause.

Yours, etc.,
CHARLES FLOWERS,
Solicitor for Defendants.

August 19th, 1899.

12 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the sixth day of February, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

EDWARD W. VOIGT, Complainant,
vs.
THE CITY OF DETROIT and THOMAS M. LUCKING, Receiver of Taxes, Defendants and Appellants } No. 17767.

This cause coming on to be heard is duly submitted on briefs.

13 Supreme Court of the State of Michigan.

EDWARD W. VOIGT, Complainant and Appellee,
vs.
THE CITY OF DETROIT ET AL., Defendants and Appellants.

Complainant filed a bill to enjoin the collection of a special assessment imposed upon his lands in a special assessment district established by the common council of Detroit, to pay part of the compensation awarded by a jury in proceedings taken to open a street. The

case was heard upon demurrer to the bill. From a decree for complainant defendants appeal.

In 1898 the city of Detroit took proceedings in the recorder's court to open Second avenue, from the boulevard to the northerly city limits. The compensation awarded for the land taken in these proceedings was $73,732.68.

In January, 1899, the common council by resolution determined that $49,155.12 is a just proportion of the compensation awarded by the jury to be paid by the owners of the property embraced in an assessment district established by the same resolution, and directed the board of assessors to make assessment accordingly. Of these proceedings Mr. Voigt had no notice.

The notice required by sec. 37, chapter 11, of the city charter, was duly given. An assessment-roll in accordance with the resolution of the council was prepared and confirmed. There was assessed against land owned by the complainant, in the assessment district established by the council, nearly ten thousand dollars. It is to restrain the enforcement of this tax that the bill is filed.

The statute to be construed reads as follows:

"If the common council or board of trustees, or board of supervisors believe that a portion of the city, village or county in the vicinity of the proposed improvement will be benefited by such improvement, they may, by an entry in their minutes, determine that the whole or any just proportion of the compensation awarded by the jury shall be assessed upon the owners or occupants of real estate deemed to be thus benefited; and thereupon they shall, by resolution, fix and determine the district or portion of the city, or village, or county benefited and specify the amount to be assessed upon the owners or occupants of the taxable real estate therein. The amount of the benefit thus ascertained shall be assessed upon the owners or occupants of such taxable real estate in proportion as nearly as may, to the advantage which such lot, parcel or subdivision is deemed to acquire by the improvement. The assessment shall be made and the amount levied and collected in the same
14 manner and by the same officers and proceeding, as near as may be, as is provided in the charter of the municipality for assessing, levying and collecting the expense of a public improvement when a street is graded." Sec. 3406, Compiled Laws 1897.

It is claimed this law is unconstitutional. The law was passed in 1883 and is the one under which the city of Detroit and other cities in the State have been operating in proceedings of a like character to this for many years. Counsel say the precise question involved has never before been passed upon. They urge that three things are required to be done after the confirmation of the verdict of the jury declaring the necessity of the improvement and awarding compensation for the property taken.

1. The common council must determine or fix the local taxing district.

2. It must determine the amount which shall be spread upon the local taxing district.

3. The board of assessors must make an assessment-roll which

shall properly apportion the amount determined by the common council among the different parcels of land in the taxing district.

No provision is made for a notice to property-owners of a time and place of hearing upon either the question of fixing a taxing district or the question of the amount of the award to be spread thereon. This, it is claimed, leads to taking property without due process of law, and therefore the law is unconstitutional.

The statute provides for a hearing in relation to the proportion each piece of property shall bear to the whole cost of the improvement, and the proper notice of this hearing was given.

It is claimed by counsel that complainant was entitled to notice of the hearing relating to the establishment of the assessment district and of the amount of the total assessment, and because the statute does not provide for these notices it is unconstitutional as taking property without due process of law. Citing Thomas *vs.* Cain, 35 Mich., 164; Detroit *vs.* Judges, 112 *id.*, 588; Davidson *vs.* New Orleans, 96 U. S., 107.

We do not think this position of the counsel can be maintained. The right of the legislature to establish special assessment districts in which all the taxes necessary to be raised to pay for a local improvement may be assessed, was for a long time questioned, but that right has been so often sustained by the courts that it is no longer open to question. In the case of The People *vs.* Brooklyn, 4 Comst. (N. Y.), 419, the following language is used:

"But there never was any just foundation for saying that local taxation must necessarily be limited by or coextensive with any previously established district. It is wrong that a few should be taxed for the whole; and it is equally wrong that the whole should be taxed for the benefit of a few. No one town ought to be taxed exclusively for the payment of county expenses, and no county should be taxed for the expenses incurred for the benefit of a single town. The same principle of justice requires that where taxation for any local object benefits only a portion of a city or town that portion only should bear the burden. There being no constitutional prohibition the legislature may create a district for that special purpose, or they may tax a class of lands or persons benefited, to be designated by the public agents appointed for that purpose, without reference to town, county or district lines. General taxation for such local objects is manifestly unjust. It burdens those who are not benefited and benefits those who are not burdened. This injustice has led to the substitution of street assessments in place of general taxation; and it seems impossible to deny that in the theory of their apportionment they are far more equitable than general taxation for the purpose they are designed for."

In Cooley on Taxation, 2 ed., p. 149, this language occurs:

"When the nature of the case does not conclusively fix it, the power to determine what shall be the taxing district for any particular burden is purely a legislative power and not to be interfered with or controlled, except as it may be limited or restrained by constitutional provisions."

"The legislature judges finally and conclusively upon all ques-

tions of policy, as it may also upon all questions of fact which are involved in the determination of a taxing district."

"And having the authority to determine what shall be the taxing districts, the legislature must also be left to its own methods of reaching the conclusion. Most cases will be settled by general law; but taxes for ordinary purposes may require special legislation, or at least may justify it. In such cases it may be proper to enter upon such inquiries into the facts as cannot well be made directly by the legislative body of the State, whose duties are too multitudi-
16 nous to admit of special investigations on a hearing of evidence or on personal examination by its members. Under such circumstances it may be proper and convenient to refer the whole subject to the local authorities; and this, in the case of local works or special improvement, is the course usually adopted. The State does not determine whether a city street shall be improved and a tax levied therefor, but, by provision in the city charter, or by special legislation it refers the whole subject to the city common council, under such directions, regulations and instructions as it may be thought proper or prudent to give or impose. The State does not divide the several counties and towns into school districts and order the construction of district school-houses; but by general law submits the subject to the people specially concerned. This is the general course, and it has been found to be the satisfactory, and therefore the wise course. And if an apportionment is to be made on the basis of benefits to property the local authorities may be and usually are empowered to refer the assessment of benefits to officers or commissioners chosen for the purpose, whose report, when under the provisions of the law it shall become final, will settle the limits of the special taxing district. These, if not the only methods of giving effect to the legislative authority over this subject, are certainly admissible and proper methods."

Under these authorities it is very clear that the legislature itself might have established the special assessment district. Had it seen fit to do so, would it be claimed that its right to do so could be questioned as unconstitutional because no notice was given to the property-holders affected thereby, that it intended to establish such a district? If the answer to this question should be in the negative, why, when the legislature has delegated to the common council of the city the right to establish the special district, should it be said that the law delegating this power is unconstitutional because notice is not required? The establishment of the special assessment district, in the one instance by the legislature and in the other instances by the common council, is the exercise of a legislative power with which the courts will not ordinarily interfere. In Rogers *vs.* St. Paul, 22 Minn., 494, it was held the legislature might submit the question of making a proposed improvement to the decision of the common council, who might avail itself of such sources of information as were accessible to it, like reports of the board of public works; and while the special benefits which will result from the improvement must be as great as the expense of making it, the determination of this question by the council, as well as the whole matter of

ordering the improvement is final, unless perhaps in case of fraud or mistake. The court used the following language:

"As respects taxation, the authority of the legislature is limited only by the constitution and the nature of taxation itself. Cooley on Taxation, ch. 2. It was, therefore, competent for the legislature to give this final and conclusive effect to the determination of the common council—that is to say, it was competent for the legislature to enact that their determination, as a part of the machinery of taxation, should be final and conclusive as respected the question whether a proposed local improvement was of such a character that the amount of taxes necessary to be raised to pay for the expense of making it would exceed the special benefits which would result from its accomplishment." See also Railroad Co. *vs.* Connelly, 10 Ohio St., 159; Spencer *vs.* Merchant, 100 N. Y., 585; same case, 125 N. S. R., 345; Cooley on Taxation, 2nd ed., pp. 606, 611, 661.

17 When the proceeding has reached that stage where it becomes necessary to decide what proportion of the cost of the proposed improvement shall be assessed to any given description of land, there must be an opportunity given to the owner of the land to be heard upon that question.

There is no claim in the bill of complaint that his property is not benefited by the proposed improvement, in excess of the amount assessed, nor is there any claim that he was not allowed to be heard in relation to the amount which should be assessed against his property, thus avoiding the difficulties found in the cases cited by the counsel for complainant. We do not think it can be said that complainant's property is taken without due process of law. This statute has been construed in Beecher *vs.* Detroit, 92 Mich., 268, and Smith *et al. vs.* Common Council, 6 Detroit Legal News, 281, and the action taken by the common council thereunder upheld.

It is said, "The act is bad because it does not fix any rule or standard by which the council are to determine the just proportion of the award of the jury to be assessed upon the district, nor limit the total assessment of the district to the amount of its benefits."

"The constitutional limit of the amount to be imposed upon the district is the total benefit to the district. The law might therefore permit the council, when, in their judgment, a portion of the city in the vicinity of the improvement is benefited thereby, to determine the amount of such benefit and to require a just proportion of the compensation awarded by the jury, not exceeding the total benefit, to be assessed upon such local district. This act contains no such limitation. The council are empowered, when they believe that a local district is benefited, to assess what in their judgment is a just proportion of the whole award upon the district, without requiring that proportion to be limited by the amount of benefit."

We do not think this is a fair construction of the language of the statute. Before the council can create the district at all they must believe that a portion of the city in the vicinity of the proposed improvement will be benefited by such improvement, and then provide for an apportionment of the compensation awarded by the jury upon the property deemed to be benefited. "The amount of the benefit

thus ascertained shall be assessed upon the owners or occupants of such taxable real estate in proportion, as nearly as may be, to the advantage which such lot, parcel or subdivision is deemed to acquire by the improvement." We think this language makes it clear that the amount of tax which may be assessed upon the district or upon any given parcel of land cannot exceed the benefit. Provision is then made for the assessment levy and collection of the tax. The demurrer should have been sustained.

The decree of the court below is reversed.

J. B. MOORE.
R. M. MONTGOMERY.
FRANK A. HOOKER.
CHAS. D. LONG.
C. B. GRANT.

(Endorsed:) Filed March 27, 1900. Chas. C. Hopkins, clerk.

18 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the twenty-seventh day of March, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

EDWARD W. VOIGT, Complainant,
vs.
THE CITY OF DETROIT and THOMAS M. LUCKING, Receiver of Taxes, Defendants and Appellants. } No. 17767.

This cause having been brought to this court by appeal from the circuit court for the county of Wayne, in chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged, and decreed by the court that the decree of the circuit court for the county of Wayne, in chancery, be, and the same is hereby, reversed, vacated, and held for naught, and the bill of complaint dismissed; and it is further ordered, adjudged, and decreed that the defendants do recover of and from the complainant their costs of both courts, to be taxed.

19 To the Honorable Robert M. Montgomery, chief justice of the supreme court of the State of Michigan:

The petition of Edward W. Voigt respectfully shows:

1. That he is the complainant and appellee in a suit in equity commenced in the circuit court for the county of Wayne, of this State, against The City of Detroit and Thomas M. Lucking, receiver of taxes of said city of Detroit, defendants, in which cause a final decree was rendered in said circuit court in favor of the complainant, and which was afterwards appealed to the supreme court of this State by said defendants.

2. That said cause was heard on appeal in the supreme court and

a decree rendered therein reversing the decree and determination of the court below and dismissing the bill of complaint.

3. That it was claimed by the complainant in said suit that the assessment of certain special assessments upon and against certain lands owned by him were invalid because a certain statute of the State of Michigan was unconstitutional and invalid for the reason that it is repugnant to the Constitution of the United States; that said claim was set up in the bill of complaint in said cause, and that the decision thereof by the supreme court of the State of Michigan was in favor of the validity of the said statute.

Wherefore your petitioner prays for an order allowing the issue of the writ of error herewith filed to remove the records in said cause to the Supreme Court of the United States for review and for a citation directed to the defendants in said cause, and that the bond herewith tendered may be duly approved.

Dated May 1st, 1900.

EDWARD W. VOIGT,
By H. E. SPALDING,
His Attorney.

20 [Endorsed:] No. 17767. State of Michigan, supreme court. Edward W. Voigt *v.* The City of Detroit *et al.* Petition for allowance — writ of error. Walker & Spalding, 18–19 Moffat bldg., Detroit, Mich.

21 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the final decree, in a suit which is in the said supreme court of the State of Michigan, before you or some of you, between Edward W. Voigt, complainant and appellee, and The City of Detroit and Thomas M. Lucking, receiver of taxes of said city of Detroit, defendants and appellants, you being the highest court of law or equity of said State in which a decision in said suit could be had, in which suit was drawn in question the validity of a statute of said State of Michigan, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of the validity of said statute, a manifest error hath happened, to the great damage of the said complainant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done

therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the second day of May, in the year of our Lord one thousand nine hundred.

Seal of the Circuit Court, Eastern District of Michigan.

WALTER S. HARSHA,
Clerk of the Circuit Court of the United States for the Eastern District of Michigan.

Allowed by—

R. M. MONTGOMERY,
Chief Justice of the Supreme Court of Michigan.

22 [Endorsed:] No. —. Supreme Court of the United States. Edward W. Voigt, plaintiff in error, *v.* The City of Detroit *et al.*, defendants in error. Writ of error. Walker & Spalding, 18–19 Moffat bldg., Detroit, Mich.

Received and filed May 2, 1900.

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

23 UNITED STATES OF AMERICA, *ss:*

To the City of Detroit and Thomas M. Lucking, receiver of taxes of said city of Detroit, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, wherein Edward W. Voigt is complainant and appellee and you are defendants and appellants, to show cause, if any there be, why the decree rendered against the said complainant and appellee, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert M. Montgomery, chief justice of the supreme court of the State of Michigan, this second day of May, in the year of our Lord one thousand nine hundred.

[Seal of the Supreme Court of Michigan, Lansing.]

R. M. MONTGOMERY,
Chief Justice of the Supreme Court of the State of Michigan.

24 EASTERN DISTRICT OF MICHIGAN, } *ss:*
County of Wayne, }

On this 3rd day of May, in the year of our Lord one thousand nine hundred, personally appeared David H. Matthews before me, the subscriber, a notary public in and for said county, and makes oath that he delivered a true copy of the within citation to William C. Maybury, the mayor of the city of Detroit, and also a like copy of

said citation to Thomas M. Lucking, receiver of taxes of said city of Detroit, on the day and year last above written.

DAVID H. MATTHEWS.

Sworn to and subscribed the 3rd day of May, A. D. 1900.

KITT B. O'MARA,
Notary Public for said County in said District.

[Endorsed:] Original. No. —. Supreme Court of the United States. Edward W. Voigt, plaintiff in error, *v.* The City of Detroit *et al.*, defendants in error. Citation. Filed June 4, 1900. Chas. C. Hopkins, clerk.

25 Supreme Court of the United States.

EDWARD W. VOIGT, Plaintiff in Error,
v.
THE CITY OF DETROIT and THOMAS M. LUCKING, Receiver of Taxes of said City of Detroit, Defendants in Error.

Assignments of Error.

Now comes the said Edward W. Voigt, complainant and plaintiff in error, by Hoyt Post, his solicitor, and says that in the record and proceedings aforesaid and in the judgment and decree of the supreme court of the State of Michigan in said cause there is manifest error, as follows, to wit:

1. That the said court erred in reversing the decree of the court below and dismissing the complainant's bill of complaint because in and by said bill of complaint and in said suit there was drawn in question the validity of a statute of the State of Michigan, being section 3406 of the Compiled Laws of the State of Michigan of the year 1897, on the ground of its being repugnant to the 14th article of the amendments to the Constitution of the United States, in that it provides for the taking of property without due process of law, and because the said judgment and decree of the said supreme court was a decision in favor of the validity of said statute.

2. That the said court erred in reversing the decree of the court below and dismissing the complainant's bill of complaint because in and by said bill of complaint and in said suit was drawn in question the validity of said statute of the State of Michigan, being section 3406 of the Compiled Laws of the State of Michigan of the
26 year 1897, on the ground of its being repugnant to the 14th article of the amendments to the Constitution of the United States, in that it denies the equal protection of the laws to the owners of property assessed under the provisions of said statute, and so denied the equal protection of the law to the complainant, and because the said judgment and decree of the said supreme court was a decision in favor of the validity of said statute.

3. The said court erred in reversing the decree of the court below and dismissing the complainant's bill of complaint because in and

by said bill of complaint and in said suit was drawn in question the validity of the proceedings taken, resulting in an assessment upon the lands of the complainant, as set forth in the bill of complaint, which proceedings were an exercise of authority under the State of Michigan, upon the ground that the said proceedings were repugnant to the 14th article of the amendments to the Constitution of the United States, in that they amounted to the taking of property without due process of law, and to a denial of the equal protection of the laws to the complainant, and because the said judgment and decree of the said supreme court was a decision in favor of the validity of said proceedings.

Whereas by the law of the land the said judgment and decree of said supreme court should have been given for the said Edward W. Voigt, complainant, and against the said City of Detroit and Thomas M. Lucking, receiver of taxes of said city of Detroit, defendants, and should have affirmed the decree of the court below, and the said Edward W. Voigt prays that the said judgment and decree may be reversed and annulled, and that a decree may be entered establishing and declaring the invalidity of said statute and proceedings.

HOYT POST,

Solicitor for Complainant and Plaintiff in Error.

27 [Endorsed:] No. —. Supreme Court of the United States. Edward W. Voigt, plaintiff in error, *v.* City of Detroit *et al.*, defendants in error. Assignments of error. Filed May 24, 1900. Chas. C. Hopkins, clerk.

28 Know all men by these presents that we, Edward W. Voigt, of the city of Detroit, Wayne county, Michigan, as principal, and Emil Landsberg and Henry Zimmermann, of the same place, as sureties, are held and firmly bound unto the City of Detroit and Thomas M. Lucking, receiver of taxes of said city of Detroit, in the full and just sum of one thousand dollars, to be paid to the said city of Detroit and Thomas M. Lucking, receiver of taxes of said city of Detroit, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this first day of May, in the year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court of the State of Michigan in a suit pending in said court wherein the said principal obligor was complainant and appellee and the said obligees were defendants and appellants, a decree was rendered against the said complainant, dismissing his bill of complaint, and the said obligor having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said City of Detroit and Thomas M. Lucking, receiver of taxes, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said

Edward W. Voigt shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

EDWARD W. VOIGT. [SEAL.]
EMIL LANDSBERG. [SEAL.]
HENRY ZIMMERMANN. [SEAL.]

Sealed and delivered in presence of—
MENZO ZIMMERMANN.
HOWARD WHELAN.

Approved by—
R. M. MONTGOMERY,
Chief Justice of the Supreme Court of the State of Michigan.

29 EASTERN DISTRICT OF MICHIGAN, } ss.:
County of Wayne, }

Emil Landsberg and Henry Zimmermann, being first duly sworn according to law, depose each for himself as follows: I am the same person whose name is subscribed to the foregoing bond as one of the sureties therein, and I state that I am worth the sum specified as a penalty thereof, over and above all my just debts and liabilities, exclusive of property which is exempt from execution.

EMIL LANDSBERG.
HENRY ZIMMERMANN.

Subscribed and sworn to before me this first day of May, 1900.
HOWARD WHELAN,
Notary Public for said County of Wayne.

(Endorsed:) Filed May 2, 1900. Charles C. Hopkins, clerk.

30 Parties.	Pl'tf's attorneys.	Def't's attorneys.
Edward W. Voigt, complainant, *vs.* The City of Detroit and Thomas M. Lucking, receiver of taxes, defendants and appellants.	Walker & Spalding. Hoyt Post. Appeal from Wayne, in chancery.	Charles Flowers.

Journal.	Date.	Hosmer, J.—Proceedings.
	1899.	
	Sept. 18	Record on appeal filed.
	" 19	Notice of appeal and proof of service filed.
	" 27	Note of argument filed.
	1900.	
P. 642 ...	Feb. 6	Submitted on briefs.
Q. 54 ...	Mar. 27	Reversed and bill dismissed; costs of both courts.
	May 2	Writ of error from Supreme Court of the United States received and filed. Allowed by Montgomery, C. J.
	" "	Bond, duly approved, filed.
	" "	Petition for writ filed.
	June 4	Citation, with proof of service, filed.
	" 13	Return made to writ of error.

31 Supreme Court of the State of Michigan.

EDWARD W. VOIGT, Plaintiff in Error,
vs.
THE CITY OF DETROIT and THOMAS M. LUCKING, Receiver of Taxes of the City of Detroit, Defendants in Error.

STATE OF MICHIGAN, *ss:*

In Supreme Court.

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, including the written decisions and reasons therefor, signed by the judges of said court and filed in my office, as appears of record and on file in said cause; that I have compared the same with the originals and it is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon, the citation, with proof of service endorsed thereon, the assignments of error, and a copy of the bond to the adverse party filed with the writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at the city of Lansing, this thirteenth day of June, in the year of our Lord one thousand nine hundred.

Seal of the Supreme Court of Michigan, Lansing.

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

Endorsed on cover: File No., 17,800. Michigan supreme court. Term No., 315. Edward W. Voigt, plaintiff in error, *vs.* The City of Detroit and Thomas M. Lucking, receiver of taxes of said city of Detroit. Filed June 15th, 1900.